

222. Amalgamations

Two or more companies may amalgamate, and continue as one company, which may be one of the amalgamating companies, or may be a new company.

223. Amalgamation proposal

(1) An amalgamation proposal shall set out the terms of the amalgamation, and in particular-

- (a) the name of the amalgamated company, if it is the same as the name of one of the amalgamating companies;
- (b) the registered office of the amalgamated company;
- (c) the full name or names and residential address or addresses of the director or directors and the secretary of the amalgamated company;
- (d) the address for service of the amalgamated company;
- (e) the share structure of the amalgamated company, specifying-
 - (i) the number of shares of the company, and
 - (ii) the rights, privileges, limitations, and conditions attached to each share of the company, if different from those set out in section 45;
- (f) the manner in which the shares of each amalgamating company are to be converted into shares of the amalgamated company;
- (g) if shares of an amalgamating company are not to be converted into shares of the amalgamated company, the consideration that the holders of those shares are to receive instead of shares of the amalgamated company;
- (h) any payment to be made to a shareholder or director of an amalgamating company, other than a payment of the kind described in paragraph (g);
- (i) details of any arrangement necessary to complete the amalgamation and to provide for the subsequent management and operation of the amalgamated company; and
- (j) a copy of the proposed constitution of the amalgamated company.

(2) An amalgamation proposal may specify the date on which the amalgamation is intended to become effective.

(3) If shares of one of the amalgamating companies are held by or on behalf of another of the amalgamating companies, the amalgamation proposal-

- (a) shall provide for the cancellation of those shares without payment or the provision of other consideration when the amalgamation becomes effective; and
- (b) shall not provide for the conversion of those shares into shares of the amalgamated company.

224. Approval of amalgamation proposal

(1) The Board of each amalgamating company shall resolve that-

- (a) in its opinion the amalgamation is in the best interest of the company; and
 - (b) it is satisfied on reasonable grounds that the amalgamated company will, immediately after the amalgamation becomes effective, satisfy the solvency test.
- (2) The directors who vote in favour of a resolution required by subsection (1) shall sign a certificate stating that, in their opinion, the conditions set out in that subsection are satisfied, and the grounds for that opinion.
- (3) The Board of each amalgamating company shall send to each shareholder of the company, not less than 20 working days before the amalgamation is proposed to take effect-
- (a) a copy of the amalgamation proposal;
 - (b) copies of the certificates given by the directors of each Board;
 - (c) a summary of the principal provisions of the constitution of the amalgamated company, if it has one;
 - (d) a statement that a copy of the constitution of the amalgamated company will be supplied to any shareholder who requests it;
 - (e) a statement setting out the rights of shareholders;
 - (f) a statement of any material interests of the directors in the amalgamation proposal, whether in that capacity or otherwise; and
 - (g) such further information and explanation as may be necessary to enable a reasonable shareholder to understand the nature and implications for the company and its shareholders of the proposed amalgamation.
- (4) The Board of each amalgamating company shall, not less than 20 working days before the amalgamation is proposed to take effect -

- (a) send a copy of the amalgamation proposal to every secured creditor of the company; and
- (b) give public notice of the proposed amalgamation, including a statement that-
 - (i) copies of the amalgamation proposal are available for inspection by any shareholder or creditor of an amalgamating company or any person to whom an amalgamating company is under an obligation at the registered offices of the amalgamating companies and at such other places as may be specified during normal business hours, and
 - (ii) a shareholder or creditor of an amalgamating company or any person to whom an amalgamating company is under

an obligation is entitled to be supplied free of charge with a copy of the amalgamation proposal upon request to an amalgamating company.

(5) The amalgamation proposal shall be approved-

(a) by the shareholders of each amalgamating company, in accordance with section 96; and

(b) if a provision in the amalgamation proposal would, if contained in an amendment to an amalgamating company's constitution or otherwise proposed in relation to that company, require the approval of an interest group, by a special resolution of that interest group.

(6) A director who fails to comply with any of subsections (2), (3) and (4) shall be guilty of an offence and liable to the penalty set out in section 493(1).

225. Short form amalgamation

(1) A company and one or more other companies that is or that are directly or indirectly wholly owned by it may amalgamate and continue as one company (being the company first referred to) without complying with sections 223 and 224 if-

(a) the amalgamation is approved by a resolution of the Board of each amalgamating company; and

(b) each resolution provides that-

(i) the shares of each amalgamating company, other than the amalgamated company, will be cancelled without payment or other consideration,

(ii) the constitution of the amalgamated company, if it has one, will be the same as the constitution of the company first referred to, if it has one, and

(iii) the Board is satisfied on reasonable grounds that the amalgamated company will, immediately after the amalgamation becomes effective, satisfy the solvency test.

(2) Two or more companies, each of which is directly or indirectly wholly owned by the same company, may amalgamate and continue as one company without complying with section 223 or section 224 if-

(a) the amalgamation is approved by a resolution of the Board of each amalgamating company; and

(b) each resolution provides that-

(i) the shares of all but one of the amalgamating companies will be cancelled without payment or other consideration,

(ii) the constitution of the amalgamated company, if it has one, will be the same as the constitution of the amalgamating company whose shares are not cancelled, if it has one, and

(iii) the Board is satisfied on reasonable grounds that the amalgamated company will, immediately after the amalgamation becomes effective, satisfy the solvency test.

(3) The Board of each amalgamating company shall, not less than 20 working days before the amalgamation is proposed to take effect, give written notice of the proposed amalgamation to every secured creditor of the company.

(4) The resolutions approving an amalgamation under this section, taken together, shall be deemed to constitute an amalgamation proposal that has been approved.

(5) The directors who vote in favour of a resolution required by subsection (1) or (2), as the case may be, shall sign a certificate stating that, in their opinion, the conditions set out in subsection (1) or (2) are satisfied, and the grounds for that opinion.

(6) A director who fails to comply with subsections (3) and (5) shall be guilty of an offence and liable to the penalty set out in section 493(1).

226. Registration of amalgamation proposal

For the purpose of effecting an amalgamation the following documents shall be delivered to the Registrar for registration

(a) the approved amalgamation proposal;

(b) any certificates required under section 224(2) or section 225(5);

(c) a certificate signed by the Board of each amalgamating company stating that the amalgamation has been approved in accordance with this Act and the constitution of the company, if it has one;

(d) if the amalgamated company is a new company or the amalgamation proposal provides for a change of the name of the amalgamated company, a copy of the notice reserving the name of the company;

(e) a certificate signed by the Board, or proposed Board, of the amalgamated company stating that, where the proportion of the claims of creditors of the amalgamated company in relation to the value of the assets of the company is greater than the proportion of the claims of creditors of an amalgamating company in relation to the value of the assets of that amalgamating company, no creditor will be prejudiced by that fact; and

(f) a document in the prescribed form signed by each of the persons named in the amalgamation proposal as a director or secretary of the amalgamated company consenting to act as a director or secretary of the company as the case may be.

227. Certificate of amalgamation

(1) Forthwith after receipt of the documents required under section 226, the Registrar shall-

(a) if the amalgamated company is the same as one of the amalgamating companies, issue a certificate of amalgamation; or

(b) if the amalgamated company is a new company ?

(i) enter particulars of the company on the Register, and

(ii) issue a certificate of amalgamation together with a certificate of incorporation.

(2) If an amalgamation proposal specifies a date on which the amalgamation is intended to become effective, and that date is the same as, or later than, the date on which the Registrar receives the documents, the certificate of amalgamation, and any certificate of incorporation shall be expressed to have effect on the date specified in the amalgamation proposal.

228. Effect of certificate of amalgamation

On the date shown in a certificate of amalgamation -

- (a) the amalgamation is effective, if it is the same as a name of one of the amalgamating companies, the amalgamated company has the name specified in the amalgamation proposal;
- (b) the Registrar shall remove the amalgamating companies, other than the amalgamated company, from the Register;
- (c) the property, rights, powers, and privileges of each of the amalgamating companies continues to be the property, rights, powers and privileges of the amalgamated company;
- (d) the amalgamated company continues to be liable for all the liabilities and obligations of each of the amalgamating companies;
- (e) proceedings pending by, or against, an amalgamating company may be continued by, or against, the amalgamated company;
- (f) a conviction, ruling, order, or judgment in favour of, or against, an amalgamating company may be enforced by, or against, the amalgamated company; and
- (g) any provisions of the amalgamation proposal that provide for the conversion of shares or rights of shareholders in the amalgamating companies have effect according to their tenor.

229. Registers

(1) Where an amalgamation becomes effective, no Registrar, including the Registrar of Deeds or other person charged with the keeping of any books or registers shall be obliged, solely by reason of the amalgamation becoming effective, to change the name of an amalgamating company to that of an amalgamated company in those books or registers or in any documents.

(2) The presentation to any Registrar or other person of any instrument (whether or not comprising an instrument of transfer) by the amalgamated company-

- (a) executed or purporting to be executed by the amalgamated company;
- (b) relating to any property held immediately before the amalgamation by an amalgamating company; and
- (c) stating that property has become the property of the amalgamated company by virtue of this Part and producing the relevant certificate of amalgamation issued under section 227, shall, in the absence of evidence to the contrary, be sufficient evidence that the property has become the property of the amalgamated company.

(3) Without limiting subsection (1) or subsection (2), where any security issued by any person or any rights or interests in property of any person become, by virtue of this Part, the property of an amalgamated company, that person, on presentation of a certificate signed on behalf of the Board of the amalgamated company, stating that that security or any such rights or interests have, by virtue of this Part, become the property of the amalgamated company, shall, notwithstanding any other enactment or rule of law or the provisions of any instrument, register the amalgamated company as the holder of that security or as the person entitled to such rights or interests, as the case may be.

230. Powers of court in other cases

(1) If the court is satisfied that giving effect to an amalgamation proposal would prejudice a shareholder or creditor of an amalgamating company or a person to whom an amalgamating company is under an obligation, it may, on the application, made at any time before the date on which the amalgamation becomes effective, by that person, make any order it considers appropriate in relation to the proposal, and may, without limiting the generality of this subsection, make an order -

- (a) directing that effect shall not be given to the proposal;
- (b) modifying the proposal in such manner as may be specified in the order; or
- (c) directing the company or its Board to reconsider the proposal or any part of it.

(2) An order may be made under subsection (1) on such conditions as the court considers appropriate.